IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 853/1997
WITH
CROSS OBJECTIONS

SMT. SHAKUNTLA TAMBI & OTHERS
v
SHRAVAN KUMAR & OTHERS

DATE OF JUDGMENT: 13th APRIL, 2007.

Hon'ble Mr. Justice R. S. Chauhan

Mr. Sandeep Mathur for the appellants.
Mr. R.S. Agrawal for the respondent No.3.
Mr. Sunil Tyagi for respondent No.6.

By Court:

Since the appeal and cross objections arise from the same award namely, award dated 5.6.97, passed by the Motor Accident Claims Tribunal, Jaipur City, Jaipur, both of them are being decided by this common judgment. The appeal has been filed for enhancement by the appellant. The cross objections, by the respondent No.3 - The National insurance Company Ltd.

The brief facts of the case are that on 29.12.89 Mr. Satish Chandra was going on his motorcycle which was being driven by respondent No.4, Ghanshyam from Village Nangal towards Jaipur. When they reached near Lakshmi Machine Tools, in Jhotwara Industrual Area, a tractor, bearing Registration No. RPE 6775, being

driven in a rash and negligent manner, came from the opposite side and hit the motorcycle. Due to the accident while Mr. Satish Chandra expired, Ghanshyam sustained injuries. At the time of his death, Satish Chandra was 37 years old and was working as a Lower Division Clerk in the Department of Employment Exchange, Government of Rajasthan, Jaipur. He was earning Rs. 2,912/- per moth. Two separate claim petitions were filed - one by the appellants and the other by Ghanshyam. In order to prove their case, the appellants examined three witnesses and submitted a number of documents. The owner of the offending vehicle examined himself as a witness and an hand-writing expert as another witness. The Insurance Company examined a single witness in their favour. After going through the oral and documentary evidence, the learned Tribunal granted a compensation of merely Rs. 3,84,000/-to the appellants. Since the appellants are not satisfied with the said compensation, they have filed the present appeal before this Court. The respondent No.3, on the other hand, has filed the cross-objections.

Mr. Sandeep Mathur, the learned counsel for the appellants, has argued that Satish Chandra, the deceased, was employed as a LDC in the Employment Exchange Department of Government of Rajasthan. His monthly salary was Rs. 2,912. In case the deceased had survived, he would have retired from the State

Government service at the age of 58 years since that was the age of superannuation at the time of the accident. Thus, he had 21 years of service before him. During this period, the deceased would not only have earned increments, but would have also benefited from the periodical revision in the pay-scale and from promotion. Had he survived he would have certainly benefited from the 5th Pay Commission which came into force with effect from 1.9.96. However, while calculating the loss of dependency, the learned Tribunal has not taken into consideration the future prospect of the deceased. It has merely taken the economic contribution of the deceased towards appellant as Rs. 2,000/- per month. In fact, the learned Tribunal should have doubled the salary for the purpose of calculating the loss of income to the family. Therefore, the learned Tribunal has erred in calculating the compensation. In order to buttress his case, the learned counsel has relied on the case of New India Assurance Co. Ltd. Vs. Kiran Singh (2004 ACJ, 1176 (S.C.)), Smt. Kalli Vs. Indar Raj (2004 WLC (U.C.) (Raj.), 789) and Smt. Chandrakanta Vs. Ashfak Ahmad (2004 WLC (U.C.) (Raj.), 791). The learned counsel has also argued that although the deceased was 37 years old, a multiplier of 15 has been applied by the learned Tribunal which is on the lower side.

On the other hand, Mr. R.S. Agrawal, learned counsel for the respondent No.3 – The National Insurance Company has raised

the contention that the driver of the offending vehicle did not have a valid licence. Thus, policy condition had been breached. Moreover, according to the policy cover note, Shravan Kumar, the insured had taken out the policy not for a tractor but for a Luna. Therefore, respondent No.3 totally denied its liability for the payment of the compensation. He further contended that grant of compensation is not a bonanza and the compensation paid by the Tribunal is more than just and reasonable. The same arguments were raised by Mr. R.S. Agrawal while arguing his cross-objections.

Mr. Sunil Tyagi, learned counsel for respondent No. 6 – The New India Assurance Company Ltd. has stated that since no liability was imposed on respondent No.6, he has nothing to submit before this Court.

We have heard the learned counsels for the parties and have perused the impugned award.

In the case of General Manager Kerala State Road Transport Corporation Vs. Susamma Thomas & Others (1994 ACJ 1), the Hon'ble Supreme Court had held that while calculating the loss of dependency the court should also consider the future prospect of the deceased. In case he is engaged in a stable employment then the income drawn by the deceased at the time of his death should be increased and the loss of dependency should be calculated on that

basis. In the case of Smt. Kalli (supra) and in the case of Smt. Chandrakanta (supra) this Court had in fact doubled the salary of the deceased on the ground that he had a stable job at the time of his death. Therefore, in the present case, considering the fact that the deceased was working as a LDC in the Department of Employment Exchange, Govt. Of Rajasthan, the strong probability exists that he would have completed his service period till the age of superannuation, that he would have received the benefit of annual increments, the increase in pay-scales and of promotion. Therefore, the learned Tribunal should have doubled his income while calculating from Rs. 2,912/- to Rs. 5,824/- per month. Reducing the said notional income by one-third, the amount the deceased would have spent on himself comes 1,9,41/- per month. Therefore, the compensation should have been assessed taking the loss of income @ Rs. 3,910/- per month.

Although according to the Second Schedule attached to the motor Vehicle Act, 1988, the multiplier of 16 should have been applied for the deceased, the Tribunal has applied a multiplier of 15. But, considering the fact that the income has been doubled , a multiplier of 15 is a just and reasonable multiplier. Therefore, the loss of dependency should be calculated at Rs. 3,910 x 12 x 15 = Rs. 7,03,800/-. Thus, the compensation is being enhanced from Rs. 3,84,000/- to Rs. 7,03,800/-.

Although the respondent No.3 has contended that the driver of the offending vehicle did not have a valid licence but it could not substantiate its contention by presenting cogent evidence. In the absence of the cogent evidence, it is difficult to hold that the terms of the insurance policy have been violated. Therefore, the learned Tribunal was justified in imposing the liability on the Insurance Company of the offending vehicle. Therefore, the first contention raised by Mr. R.S. Agrawal is unacceptable.

As far as second contention with regard to insurance policy cover note is concerned, according to the rate of premium to be paid for a Luna and for a Tractor at the relevant time, the rate of premium was only Rs. 36/- for both the vehicles. Moreover, although the cover note does indicate that the insurance was for a Luna, but the fact remains that the Registration number. of the offending vehicle in the present case is RPE 6775, which has also been shown as the Registration number of the Luna. Since the identical registration number cannot be given to two different vehicles, a strong possibility does exist that, in fact, the premium was paid by the insured not for the Luna but for the Tractor-the offending vehicle in the case. Moreover, since the same premium has to be paid for the insurance of a Luna and for the insurance of a Tractor, a strong possibility does exist that the Cover Note has been recorded

incorrectly. Therefore, the second contention raised by Mr. Agrawal is unsustainable.

In the result, while we allow the appeal, we dismiss the cross objections filed by the Insurance Company. As indicated above enhanced compensation of Rs. 7,03,800/- shall be paid to the appellants alongwith an interest @ 9% per annum from the date of the filing of the claim petition till the date of realisation. However, it is clarified that in case any compensation amount has already been paid to the appellants, the same shall be adjusted and the remaining amount shall be paid alongwith above-mentioned interest within a period of three months from the date of receipt of the certified copy of this judgment.

(R.S. CHAUHAN) J.

MRG.